

APPEAL NO. 010707

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2001. With respect to the issues before her the hearing officer determined that the respondent (claimant) sustained an occupational disease injury on _____; that the claimant reported the injury to her employer within 30 days; that the appellant (carrier) contested compensability in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6); that the claimant timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year; and that the claimant had disability. The carrier appeals, contending that the adverse determinations are against the great weight and preponderance of the evidence. The hearing officer's determination that the carrier contested compensability in accordance with Rule 124.6 has not been appealed and has become final. Section 410.169. The claimant responds, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in reaching the challenged determinations. The claimant testified about the nature and extent of her injury and Dr. R and Dr. P also related the claimant's injury to her job. She further testified that she did not know that her job caused her occupational disease injury until she saw Dr. R on _____, and that she reported the injury the next day to her employer. The hearing officer noted that the Commission received the claimant's Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) on September 22, 2000, well within one year of the date of injury, which we affirm. The carrier's basis for contending that both the claimant's notice and claim were untimely is its contention that the date of injury was _____. Finally, the claimant testified about her disability and offered evidence from Dr. P, who had taken her off work on September 5, 2000, and placed restrictions on her return to work until February 19, 2001.

The hearing officer is the sole judge of the weight and credibility of the evidence presented. Section 410.165(a). It was her responsibility to resolve conflicts and contradictions in the evidence, including the medical evidence, and determine what facts were established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). When reviewing a hearing officer's findings we will reverse only if they are so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain,

709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). We do not find the challenged determinations to be against the great weight and preponderance of the evidence. Accordingly, the decision and order are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge